

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.11.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
and
THE HON'BLE MR. JUSTICE S. TAMILVANAN

Writ Petition No.20307 of 1998

M/s. Taj roller flour Mills (P) Ltd.,
represented by its Power Agent
Mr. Navratan Lunawath
8, Sir Ramaswamy Street
Vepery, Chennai 600 007. ... Petitioner

Vs.

The Member Secretary
Chennai Metropolitan
Development Authority
1, Gandhi Irwin Road,
Chennai 8. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus as stated therein.

For petitioner : Mr. K. Venkatasubramanian

For respondent : Mr. J. Ravindran

ORDER

(Order of the Court was made by P. SATHASIVAM, J.)

The petitioner seeks to issue a writ of certiorarified mandamus calling for the records relating to C.3.341/98 dated 15.10.1998 of the Chennai Metropolitan Development Authority (in short "CMDA") and quash the same in so far as it pertains to the demand for Open Space Reservation charges (in short "OSR charges") of Rs.10,35,000/- as illegal, arbitrary and without jurisdiction and consequently, direct the said authority to sanction the plan forthwith by collecting OSR charges on the basis of guideline value of Sub-Registrar, Royapuram calculating at the rate prevailing on the date of filing the application for planning permission, i.e., on 14.10.1996.

2. According to the petitioner, planning permission papers were presented to the respondent on 14.10.1996. On the date of submission of the planning permission papers, the guideline value prescribed by the Government was Rs.471/- per sq.ft. The papers were then placed before the Multi-storey Building Panel as contemplated under Rule 14 of the Special Rules for Multi-storey Building. On 15.11.1996, the said Panel cleared the proposal made by the petitioner, however, subject to the approval by the Government to issue planning permission on various conditions such as, No Objection Certificate (in short "NOC") from Deputy Commissioner of Traffic, Director of Fire Service, Chennai Metropolitan Water Supply and Sewerage Board and NOC from Madras Regional Advisory Committee and Civil Aviation and also on payment of OSR and Regulation charges. After receiving the approval of the planning permission from the Government, the respondent sent a communication to the petitioner on 15.10.1998 with a request to pay development charges, regularization charges, OSR charges, security deposit for the proposed development and security deposit for Display Board. The petitioner requested the respondent to calculate the OSR charges on the date of submission of the planning papers and pass suitable orders. However, the respondent required the petitioner to pay OSR charges of Rs.10,35,000/-. Then, the petitioner sent a representation to the respondent on 04.12.1998, requesting to calculate the OSR charges on the basis of guideline value prevailing then on 14.10.1996 and not as on the date of demand. Though the respondent acknowledged the said representation dated 04.12.1998, no order has been passed; hence, the petitioner filed the present writ petition.

3. The Chief Planner of the respondent filed a counter affidavit stating that the petitioner applied for planning permission of 2 Blocks, basement + ground + 6 floors for garment industry and ground + 11 floors for residential purpose at S.No.3958/2, Block No.75, Door No.646, Tiruvottiyur High Road, Tondiarpet, Chennai on 14.10.1996. The proposal was placed before the Multi-storey Building Panel meeting held on 15.11.1996 and the panel accepted the CMDA recommendations. The proposal was recommended to the Government to issue planning permission subject to production of NOCs from various Departments. The Deputy Commissioner of Police by letter dated 08.01.1996, rejected the proposal for granting planning permission from the traffic point of view. Hence, a revised plan was submitted on 18.02.1997 and NOC from Deputy Commissioner (Traffic) was received on 14.03.1997, and NOC from Fire Service was received on 30.03.1997. NOCs from Airport Authority of India and Chennai Regional Advisory Committee were obtained on 15.04.1997 and 09.02.1998 respectively. Finally, NOC from Chennai Metro Water Supply and Sewerage (in short CMWSS) was obtained on 12.02.1998. On receipt of those certificates, the proposal was forwarded to the Government on 23.02.1998. The Government in G.O.No.211, Housing and Urban Development Department

approved the recommendations of the Multi-storeye Building Panel for the issuance of planning permission subject to the condition that the petitioner pays OSR and Regularization charges. The communication dated 15.10.1998 demanding various charges is under challenge in this writ petition. The OSR charges are calculated only on the date when the permission of development is granted and not on the date when application is made. Further, the OSR charges are calculated as per Development Control Rules and guideline value.

4. The learned counsel for the petitioner submitted that inasmuch as the petitioner submitted its planning permission papers on 14.10.1996, it is but proper on the part of the respondent to calculate OSR charges at the rate of Rs.471/- per sq.ft. which was prevailing on that date and not at the rate prevailing on the date of issuance of the demand. However, on going through the factual details given in the counter affidavit and found in the files produced by the learned counsel for the respondent, we are unable to accept the said contention for the following reasons.

5. It is true that the petitioner's proposal was placed before the Multi-storeye Building Panel meeting held on 15.11.1996. Equally it is also true that the said Panel accepted the CMDA's recommendations. It is further clear from the counter affidavit that the said proposal was recommended to the Government to issue planning permission, however subject to fulfillment of certain conditions, which we have already extracted in the earlier part of our order. In para-3 of the counter affidavit, it is stated that based on the revised plan, NOC from Deputy Commissioner (Traffic) was received on 14.03.1997. Likewise, NOC from Fire Service was received on 30.03.1997 and NOC from Airport Authority was received on 15.04.1997 and NOC from Chennai Regional Advisory Committee was received on 09.02.1998 and NOC from CMWSS Board was furnished only on 12.02.1998. On receipt of all those documents, viz., No Objection Certificates, which are mandatory for considering the case of the petitioner, the proposal was forwarded to the Government on 23.02.1998 and thereafter, the Government approved the recommendations of the Multi-storeye Building Panel for the issue of planning permission subject to payment of OSR charges, etc. which was communicated to the petitioner by the respondent through the impugned letter.

6. If we accept the case of the petitioner that the guideline value prevailing on the date of application alone has to be taken note of for the fixation of OSR charges, it would lead to a situation that everyone would prefer to make application without complying with the conditions. Merely because the Panel approved the recommendations of the CMDA, it cannot be claimed that the petitioner's application was in order in all respects and it is entitled to planning permission as of right. We have already referred to the various conditions to be fulfilled, and on receipt

of NOCs from various authorities, the proposal was forwarded to the Government on 23.08.1998. In such circumstances, it cannot be claimed that the delay was on the part of the respondent. Even if we accept that there is delay, it cannot be claimed that the respondent is responsible for the same.

In view of the details furnished in the earlier part of our order, there is no need for us to repeat the same once again. We accept the explanation offered by the respondent and consequently reject the claim made by the petitioner. The writ petition fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Member Secretary
Madras Metropolitan
Development Authority
Thalamuthu Natarajan Building
Gandhi Irwin Road, Chennai 8.

1 cc to Mr.K.Venkatasubramanian, Advocate, SR.57351

1 cc to Mr.J.Ravindran, Advocate, SR.58204

jrg (co)

dv/11.12.06

Order in
WP.No.20307/1998

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